

Message Text

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COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10 INT-05
L-03 NSAE-00 NSC-05 OMB-01 PM-05 ICA-11 OES-07
SP-02 SS-15 STR-07 TRSE-00 ACDA-12 PA-01 /140 W
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R 071226Z

FM AMEMBASSY ABU DHABI
TO SECSTATE WASHDC PRIORITY 7783
INFO AMEMBASSY DOHA
AMEMBASSY JIDDA
AMEMBASSY KUWAIT
AMEMBASSY LONDON
AMEMBASSY MANAMA
AMEMBASSY MUSCAT
AMEMBASSY TEHRAN

C O N F I D E N T I A L SECTION 1 OF 2 ABU DHABI 1281

E.O. 11652: GDS

TAGS: ENRG, EINV, TC, UR, US

SUBJECT: TAX AND ROYALTY PROBLEM FOR CRESCENT PETROLEUM

REFS (A) ABU DHABI 891, (B) ABU DHABI 892, (C) TEHRAN 3404,
(D) AMB'S MEMO OF APRIL 26, 1978, (E) AMB'S MEMO OF MAY 2, 1978 (NOTAL)

1. CRESCENT PETROLEUM MANAGING DIRECTOR HAMID JAAFAR CALLED ON
AMBASSADOR MAY 7 TO FURNISH EMBASSY WITH TEXT (SEE SEPTTEL) OF
MAY 4 LETTER WHICH SHAREHOLDERS HAD RECEIVED FROM RULER OF
SHARJAH. SHAIKH SULTAN LETTER IN EFFECT REJECTS CRESCENT REQUEST
TO TAKE MATTER TO ARBITRATION ON GROUNDS THAT RULES AND
REGULATIONS
RELATING TO TAXATION ARE A SOVEREIGN MATTER AND NOT SUBJECT TO
ARBITRATION.

2. JAAFAR SAID THAT NIOC REPRESENTATIVES KHALILI, FARID, AND
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SHIRAZI HAD COME TO SHARJAH ON MAY 2 TO DISCUSS WITH RULER HOW
TO RESPOND TO CRESCENT'S MARCH 22 LETTER (REF B). ACCORDING TO
JAAFAR, NIOC REPS HAD TAKEN EXTREMELY HARD LINE INSISTING THAT IF
CRESCENT DID NOT ACCEPT TEROS SET FORTH IN SHAIKH SULTAN'S FEBRUARY
25 LETTER (ABU DHABI 545), THEN SHARJAH SHOULD HALT CRESCENT

OPERATIONS IMMEDIATELY AND NATIONALIZE COMPANY. RULER OF SHARJAH HAD REFUSED TO TAKE SUCH AN IMMEDIATE AND DRASTIC STEP; CONSEQUENTLY, TERMS OF LETTER HAD BEEN LESS HARSH THAN NIOC RECOMMENDED. DURING DISCUSSION, JAAFAR SAID HE HAD BEEN TOLD THAT WHEN SHARJAH HAD ASKED IRANIANS "IF NIOC WOULD TAKE ON RESPONSIBILITY FOR CONSEQUENCES OF NATIONALIZATION AND PUT THIS IN WRITING." IRANIAN REPS HAD BACKED OFF.

3. JAAFAR SAID THAT LETTER FROM SHAIKH SULTAN HAD BEEN GIVEN TO BUTTES LEGAL COUNSEL NORTHCUTT ELY WHILE CALLING ON RULER OF SHARJAH

ON MAY 4. PURPOSE OF ELY'S CALL HAD BEEN TO ASK SHAIKH SULTAN IF HE WOULD HAVE OBJECTION TO ELY'S REPRESENTING CRESCENT IN ITS TAX AND ROYALTY DISPUTE WITH SHARJAH SINCE BQY SEPARATELY IS PART OF LEGAL TEAM REPRESENTING SHARJAH IN ITS BOUNDARY DISPUTE WITH DUBAI (SEE REF E). ELY WAS PREPARED TO HAVE ANOTHER LAWYER ACT AS CRESCENT'S COUNSEL. SHAIKH SULTAN HAD HOWEVER INDICATED THAT HE HAD NO PROBLEM SINCE THE SHARJAH-DUBAI DISPUTE (WHICH IS NOW TO BE ADJUDICATED BY THREE INTERNATIONAL ARBITRATORS) WAS A TOTALLY DIFFERENT AND UNRELATED ISSUE. IN HIS MEETING WITH ELY, SHAIKH SULTAN HAD EXPRESSED PITY THAT TAX AND ROYALTY PROBLEM COULD NOT BE RESOLVED AMICABLY, ADDING THAT HE HAD HAD GREAT DIFFICULTY IN TONING DOWN LETTER WHICH IRANIANS WANTED TO SEND.

4. IN COURSE OF THIS MEETING, JAAFAR SAID JUDGE YUSRI DUWAIK, WHO ACTS AS SHARJAH'S LEGAL COUNSEL FOR TAX AND ROYALTY MATTERS HAD ENTERED INTO A HEATED EXCHANGE WITH ELY. DUWAIK HAD SAID CRESCENT HAD NO BUSINESS THREATENING SHARJAH WITH INTERNATIONAL ARBITRATION BECAUSE TAX AND ROYALTY WAS SOVEREIGN
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MATTER AND THERE WERE NO PRECEDENTS. ELY HAD POINTED TO ARTICLE 34 OF 1969 AGREEMENT WHICH CLEARLY SPELLS OUT PROCEDURES FOR INTERNATIONAL ARBITRATION AND NOTED PRECEDENT WHEN US EMBASSY IN TRIPOLI HAD SUBMITTED A PROTEST NOTE ON SEPT 14, 1973 OVER LIBYA'S NATIONALIZATION OF AMERIC'-OWNED OIL COMPANIES. THE MATTER HAD SUBSEQUENTLY GONE TO INTERNATIONAL ARBITRATION UNDER TERMS OF THE CONCESSION AGREEMENT. THE DECISION OF THE INTERNATIONAL TRIBUNAL HAD BEEN WORKED OUT SIX MONTHS AFTER THE TRIBUNAL HAD HANDED DOWN ITS DECISION. JUDGE DUWAIK HAD ALSO ASKED WHY CRESCENT HAD NOT ACCEPTED THE ORIGINAL PROPOSAL TO HAVE A TAX AND ROYALTY OF 65/14.5 PERCENT. ELY POINTED OUT THAT CRESCENT HAD AGREED PROVIDED THERE WAS NO RETROACTIVITY AND NO FURTHER CLAIMS. AFTER THEY HAD LEFT PRESENCE OF RULER OF SHARJAH, JUDGE DUWAIK HAD SAID TO ELY THAT IF CRESCENT SHAREHOLDERS DO NOT ACCEPT TERMS OF MAY 4 LETTER, THEN OPERATION WILL BE NATIONALIZED.

5. ACCORDING TO JAAFAR, ELY CAME AWAY WITH FEELING THAT WHILE RULER OF SHARJAH HAD FOUND EXCHANGE BETWEEN ELY AND

DUWAIK INTERESTING AND EDUCATIONAL, HE WAS GRADUALLY BEING BACKED INTO CORNER BY IRANIANS. ELY HAD RAISED POINT IRAN OWES SHARJAH \$30 TO \$40 MILLION BECAUSE SHAH HAD NEVER FULFILLED 1971 COMMITMENT TO PAY OUT OF IRAN'S SHARE OF 3/16THS OF TOTAL REVENUE FROM MUBARRAK OFFSHORE FIELD OPERATION TO UMM AL QAIWAIN. GHIS COMMITMENT HAD BEEN NEGOTIATED BY BRITISH NEGOTIATOR LUCE IN RETURN FOR AGREEMENT OF THEN RULER OF SHARJAH, SHAIKH KHALID, TO SHAH'S DEMAND FOR FOR CO-SOVEREIGNTY OVER ISLAND OF ABU MUSA (SEE ALSO REF E). SHAIKH SULTAN HAD RESPONDED THAT HE KNEW THIS BUT SINCE IRAN HAD NOT PAID, HE HAD PAID UMM AL QAIWAIN FROM SHARJAH'S SHARE. SHAIKH SULTAN HAD INDICATED THAT HE DID NOT INTEND TO PURSUE THIS POINT WITH THE SHAH.

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C O N F I D E N T I A L SECTION 2 OF 2 ABU DHABI 1281

6. JAAFAR EXPECTED THAT CRESCENT SHAREHOLDERS WOULD SHORTLY BE SEEKING MEETING WITH DEPARTMENT TO DISCUSS NEXT STEPS. IN ALL LIKELIHOOD, SHAREHOLDERS WOULD INSIST ON ARBITRATION. REFUSAL TO ARBITRATE WOULD BE SEEN AS A VIOLATION OF THE CONCESSION AGREEMENT AND A DENIAL OF JUSTICE.

7. AMBASSADOR NOTED HIS CONVERSATIONS OF APRIL 12 WITH OIL MINISTER UTAYBA AND APRIL 25 WITH UNDER SECRETARY ISMAIL REGARDING CRESCENT PROBLEM AND THEIR CONCERN THAT MATTER NOT GO TO ARBITRATION LEST IT DAMAGE SHARJAH'S AND INDIRECTLY

UAE'S REPUTATION. (REF D). BOTH HAD MENTIONED THAT THERE ARE SEVERAL EXAMPLES IN ABU DHABI WHERE TAX AND ROYALTY FOR SMALL OFFSHORE FIELDS WERE SIMILAR TO THOSE EXISTING FOR MUBARRAK FIELD. JAAFER SAID THAT THIS CONVERSATION HAD GOTTEN BACK AS HE HAD BEEN ASKED BY ISMAIL TO PROVIDE DETAILS TO MINISTRY OF PETROLEUM. JAAFAR HOPED THAT OIL MINISTER UTAYBA MIGHT MEET WITH SHAIKH SULTAN TO GIVE HDW SOME BACKBONE. WHILE CRESCENT
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SHAREHOLDERS WOULD PREFER TO FIND SOME ACCEPTABLE SOLUTION, HE THOUGHT ARITRATION MIGHT IN FACT BE THE BEST OUTCOME AND SAVE FACE FOR EYERYONE.

8. COMMENT: SINCE EMBASSY TEHRAN SEEMS RELUCTANT TAKE THIS MATTER UP AT SUITABLY HIGH LEVEL (REF C), BELIEVE ONLY COURSE OF ACTION WE HAVE IS FOR AMBASSADOR TO MEET WITH SHAIKH SULTAN AND UAE OFFICIALS TO URGE THAT ARBITRATION CLAUSES IN 1969 AGREEMENT BE HONORED, POINTING OUT THAT REFUSAL TO ARBITRATE AND RESORT TO NATIONALIZATION WOULD ONLY RESULT IN A LENGTHY LEGAL PROCESS WHICH COULD BE OF NO BENEFIT TO SHARJAH OR UAE GENERALLY.
DICKMAN

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